

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

LYDIA GARCIA ,	§	
<i>Plaintiff,</i>	§	
	§	
V.	§	CIVIL ACTION # 3:16-cv-00468
	§	
UNITED STATES,	§	
	§	
	§	
<i>Defendants.</i>	§	

COMPLAINT AND JURY DEMAND

TO THE HONORABLE JUDGE OF THIS COURT:

NOW COMES, LYDIA GARCIA (hereinafter called "Plaintiff") comes forth to present this complaint against UNITED STATES (hereinafter called "Defendant"). For cause of action, Plaintiff would show the Court as follows:

SUBJECT-MATTER JURISDICTION AND VENUE

1. Plaintiff brings this action under the Federal Torts Claim Act, 28 U.S.C. § 2671, *et seq.*
2. This court has jurisdiction pursuant to the following statutes:
 - a. 28 U.S.C. §1331, which gives district courts original jurisdiction over civil actions arising under the Constitution, laws or treaties of the United States;
 - b. 28 U.S.C. § 1346(b), which district courts jurisdiction over matters in

which a government employee's actions resulted in an injury to another person.

3. Defendant was properly notified of the claim by Plaintiff through correspondence sent on December 10, 2015, to which Defendant responded denying culpability.

4. Venue is appropriate in this judicial district under 28 U.S.C. § 1391(b) because the events giving rise to this Complaint occurred in this district.

PARTIES

5. Plaintiff is a natural person over the age of majority, and a resident of El Paso County, Texas. In every respect, she is competent to assist in the prosecution of this lawsuit.

6. Defendant is a governmental unit as defined by the Federal Tort Claims Act. It is competent to assist in the defense of this lawsuit.

GENERAL ALLEGATIONS

7. The incident made the basis of this complaint occurred at about 6:00 a.m. on February 24, 2015. The site of the accident was the intersection of Father Rahm and El Paso St. in El Paso County, Texas. At that juncture, El Paso Dr. is a three lane one way roadway with traffic running northbound. Father Rahm is a roadway with traffic travelling east and west with one lane for traffic in each direction. The intersection is controlled by a stop sign for traffic travelling along Father Rahm.

8. At the time of the collision, Plaintiff was a pedestrian walking along Father Rahm. Defendant's employee (hereinafter "Gonzales") was in the course and scope of his employment with the United States Border Patrol. Plaintiff was walking along Father Rahm, and Gonzales was traveling in the marked border patrol car provided to him by Defendant.

9. At the time of the collision, Plaintiff was on Father Rahm more than halfway through the intersection with El Paso St. As Plaintiff was more than halfway into the intersection, Gonzales made an unsafe left turn to go northbound on El Paso St.. Gonzales failed to yield the right of way and crossed into Plaintiff's path causing the vehicle to hit Plaintiff and knock her to the ground with great force. The collision caused Plaintiff to suffer serious injuries.

CAUSE OF ACTION AGAINST GONZALES:
NEGLIGENT OPERATION OF A MOTOR VEHICLE

10. As Defendant Marin was traveling along the public roadways of Texas at the time of the accident, he had a duty to exercise ordinary care in the operation thereof; operate the vehicle in a safe and prudent manner; and to abide by the provisions of Chapter 545 of the Texas Transportation Code. Defendant negligently breached his duties by: (a) failing to keep a proper lookout for pedestrians traveling on the roadway; (b) failing to yield the right of way at a stop sign; (c) failing to brake to avoid the collision; (d) failing to take other evasive action to avoid the collision; and (e) making an unsafe left turn. Defendant's negligent conduct, as described above, taken singularly or

in any combination, was a proximate cause of the accident and Plaintiff's accident-related injuries.

CAUSE OF ACTION AGAINST DEFENDANT UNDER FEDERAL TORT CLAIMS
ACT: INJURY IN COURSE AND SCOPE OF EMPLOYMENT

11. Gonzales was driving the motor vehicle while in the employ of Defendant. As such, Defendant is liable to Plaintiff as causing injury under the Federal Tort Claims Act because Gonzales was in the course and scope of his employment with U.S. Border Patrol and would be liable to Plaintiff as a private person. 28 U.S.C. § 2671, *et seq.*

12. Defendant is a governmental unit, and its employee, Gonzales, was negligent while acting in the course and scope of his employment. Gonzales' negligent conduct, as described above, taken singularly or in any combination, was a proximate cause of the collision and the resulting accident-related injuries to Plaintiff. Because Gonzales' negligence was the proximate cause of the injuries sustained by Plaintiff, Gonzales would have been found personally liable for his conduct under Texas law. This negligence is imputed to Defendant through the Federal Tort Claim Act.

PLAINTFF'S BODILY-INJURY DAMAGES

13. As a result of her involvement in the accident, Plaintiff suffered severe, painful, and incapacitating injuries. The injuries have caused her to suffer — and, in all probability, will continue causing her to suffer — the following elements of damages: (a) physical pain and suffering, past and future; (b) mental anguish, past and future; (c) physical impairment, past and future; and (d) medical expenses, past and future.

DEMAND FOR JURY TRIAL

14. Plaintiff is respectfully requesting a trial by jury.

PRAYER

15. WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully demands that this Court, after the trial of this matter, grant the following relief to Plaintiff:

- a. Judgment against Defendant for compensatory in an amount of \$250,000.00;
- b. Post-judgment interest at the highest rate allowed by law;
- c. Costs of court; and
- d. Any further relief to which Plaintiff may be justly entitled.

Respectfully submitted,

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